

FILED

AUGUST 9, 2007

**MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NF

UNITED STATES OF AMERICA)
)
Plaintiff,)
) CIVIL ACTION NO.
v.)
)
BFI WASTE SYSTEMS OF NORTH)
AMERICA, INC.,)
BORDEN CHEMICAL, INC., AS)
SUCCESSOR IN INTEREST TO)
IB DISTRIBUTORS, INC.,)
EXXON MOBIL CORPORATION,)
GIDDINGS & LEWIS MACHINE)
TOOLS, LLC, AS SUCCESSOR IN)
INTEREST TO BASIC ELECTRONICS)
MFG. CORP.,)
H. B. FULLER COMPANY,)
HONEYWELL, INC.,)
JENSEN DISPOSAL SERVICE, INC.,)
MAIL-WELL ENVELOPE CO.,)
MORTON INTERNATIONAL, INC.,)
MUNDELEIN DISPOSAL SERVICE,)
INC.,)
VILLAGE OF WAUCONDA, ILLINOIS,)
WASTE MANAGEMENT OF ILLINOIS,)
INC.,)
WAUCONDA SAND & GRAVEL, CO.,)
and WEBER FOREIGN)
MANUFACTURING, INC., f/k/a INK)
SPECIALTIES COMPANY, INC.)
)
Defendants.)
_____)

07 C 4499

**JUDGE LEFKOW
MAGISTRATE JUDGE BROWN**

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended, 42 U.S.C. §§ 9606 and 9607 for injunctive remedial action and for recovery of costs (“response costs”), with accrued interest, incurred by the United States in responding to a release or threat of release of hazardous substances at or from the Wauconda Sand and Gravel Superfund Site (the “Site”), located at or near Wauconda, Illinois. The United States also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that the Defendants are jointly and severally liable for any future response costs in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b); and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b) and (c), because the threatened or actual releases of hazardous substances that give rise to the United States’ claims have occurred in this District.

GENERAL ALLEGATIONS

4. The Site is located in Lake County, Illinois, approximately one to one and one-half miles north of the Village of Wauconda and three miles east of the Village of Island Lake. The Site is bordered by Garland Road on the east, Bonner Road on the South and Mutton Creek on the north, and occupies property including, but not limited to, a 74-acre area known as the

Wauconda Sand and Gravel Landfill. The Site consists of a 43-acre permitted landfill, a 9-acre unpermitted landfill, and various perimeter areas.

5. Wauconda Sand & Gravel Co. currently owns the Site and operated the landfill from approximately 1950 through 1978.

6. From approximately 1950 through 1978, landfill operations were conducted at the Site, and various residential, municipal, commercial and industrial wastes were disposed of at the Site. In 1978, landfill operations at the Site ceased.

7. Numerous persons, including the defendants to this action, sent and/or transported to the Site for treatment or disposal waste materials that contained "hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and as listed in the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, including, but not limited to, ignitable and corrosive hazardous wastes, electroplating wastes, wastes containing cadmium, lead, chromium, nickel, toluene, methylene chloride, acetone and various aromatic and aliphatic hydrocarbons. *See* Table of Hazardous Substances at 40 C.F.R. § 302.4 (Appendices A and B).

8. In 1983, EPA placed the Site on the National Priorities List ("NPL"). The NPL, established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and the NCP, identifies sites throughout the United States that, because of releases or threatened releases of hazardous substances, pose a significant threat to human health and the environment.

9. In June 1983, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, EPA initiated a Remedial Investigation ("RI") and a Feasibility Study ("FS") (collectively, "RI/FS") of the Site. EPA completed the RI in August 1984 and the FS in August 1985.

10. The RI/FS identified the presence of hazardous substances in leachate seeps that

discharged from the Site into Mutton Creek, including, without limitation, cadmium, lead, chromium, nickel, silver, acetone, toluene, and xylene. Various hazardous substances, including nickel, lead, chromium, cadmium, arsenic, benzene and vinyl chloride, have been detected in samples of groundwater collected at the Site during the RI/FS.

11. Based on the results of the RI/FS, and on the public comment received on EPA's proposed remedial action for the Site, on September 30, 1985, EPA issued a Record of Decision ("ROD-1") selecting certain interim remedial measures for the Site, including repair of an existing landfill cap at the Site and installation of a leachate collection system and a perimeter fence around the Site. In addition, ROD-1 indicated that a supplemental RI/FS would be conducted to further define potential environmental impacts of releases from the Site, including impacts on the upper aquifer, before a decision on a final remedial action for the Site. The Illinois Environmental Protection Agency ("Illinois EPA") concurred in ROD-1.

12. Following completion of a supplemental RI/FS, on March 31, 1989 EPA issued a second ROD ("ROD-2") selecting the final remedy for the Site. ROD-2 called for, among other things: (1) continued groundwater monitoring on and around the Site; (2) upgrading of the landfill cap; (3) installation of additional gas vents with the capability of reducing gas emissions, as necessary; and (4) continued operation and maintenance of the leachate collection system.

13. "Disposal" of "hazardous substances" into the environment at the Site, within the meaning and scope of Sections 101(29) and 101(14) of CERCLA, 42 U.S.C. §§ 9601(29) and 9601(14), occurred at the facility during the period it was owned and operated by Wauconda Sand & Gravel Co.

14. There has been a “release” or “threatened release” of “hazardous substances” into the environment at the Site within the meaning of Sections 101(22), 101(14), and 107(a) of CERCLA, 42 §§ 9601(22), 9601(14) and 9607(a).

15. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. As a result of releases and threatened releases of hazardous substances at the Site, the United States has incurred “response” costs within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in connection with the Site, including, without limitation, costs of investigation and enforcement, and costs of planning, directing, and overseeing response actions at the Site.

17. Both the interim and final remedial measures that EPA selected for the Site are consistent with CERCLA and the National Contingency Plan (“NCP”), 40 C.F.R. Part 300.

THE DEFENDANTS

18. BFI Waste Systems of North America, Inc. is a Delaware corporation. On information and belief, BFI Waste Systems of North America, Inc. succeeded to the liabilities of companies (Laeske Disposal Co., Barrington Trucking Co., and Browning-Ferris Industries) who accepted hazardous substances for transport to the facility and selected the facility for such transport, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

19. Borden Chemical, Inc. is an Illinois corporation and a successor in interest to IB Distributors, Inc. (f/k/a Illinois Bronze Co., Inc.). IB Distributors, Inc. by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section

107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

20. Exxon Mobil Corporation is a New Jersey corporation. On information and belief, Exxon Mobil Corporation succeeded to the liabilities of a company (Exxon Chemical Americas) who by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

21. Giddings & Lewis Machine Tools, LLC, is a Wisconsin corporation and a successor in interest to Basic Electronics Mfg. Corp. Basic Electronics Mfg., Inc. was an Illinois corporation who, based on information and belief, by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

22. H.B. Fuller Co. is a Minnesota corporation. On information and belief, H.B. Fuller Co. by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

23. Honeywell, Inc. is a Delaware corporation. On information and belief, Honeywell, Inc. by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

24. Jensen Disposal Services, Inc. is an Illinois corporation. Jensen Disposal Services, Inc. accepted hazardous substances for transport to the facility and selected the facility for such

transport, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4)

25. Mail-Well Envelope Co., is a Delaware corporation, and on information and belief is a wholly-owned subsidiary of Georgia-Pacific Corporation, a Georgia corporation. On information and belief, Mail-Well Envelope Co. succeeded to the liabilities of a company (Heco Envelope, a company of Great Northern Nekoosa Corp.) who by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

26. Morton International, Inc. is an Indiana corporation. On information and belief, Morton International, Inc. succeeded to the liabilities of a company (Morton Chemical Co.) who by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

27. Mundelein Disposal Service, Inc. is an Illinois corporation. Mundelein Disposal Service, Inc. accepted hazardous substances for transport to the facility and selected the facility for such transport, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

28. The Village of Wauconda, Illinois, is an Illinois municipal corporation, which by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3); the Village of Wauconda also accepted hazardous substances for transport to the facility and selected the facility for such transport, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

29. Waste Management of Illinois, Inc. is a Delaware corporation. On information and belief, Waste Management of Illinois, Inc. succeeded to the liabilities of companies (Buffalo Grove Disposal, CCD Disposal, Elgin Wayne Disposal, HOD Disposal, McHenry-Woodstock Disposal, Obenauf Disposal, S&S Disposal, and Waste Management, Inc.) who accepted hazardous substances for transport to the facility and selected the facility for such transport, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

30. Wauconda Sand & Gravel Company is an Illinois corporation. Wauconda Sand & Gravel Company was the owner of the facility within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), at the time hazardous substances were disposed of at the facility within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

31. Weber Foreign Manufacturing, Inc. is an Illinois corporation, f/k/a Ink Specialties Co., Inc. Ink Specialties Co., Inc. by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3)

FIRST CLAIM FOR RELIEF
(CERCLA Section 106 Remedial Action)

32. Paragraphs 1 through 31 are realleged and incorporated herein by reference.

33. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the President, when he determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, may direct the Attorney General of the United States to secure such relief as may

be necessary to abate such a condition or issue such orders as may be necessary to protect public health and welfare and the environment from imminent and substantial endangerment because of an actual or threatened release of a hazardous substance from a facility.

34. The functions vested in the President by Section 106(a) of CERCLA, as pertinent to this claim for relief, have been delegated to EPA. *See* Executive Order 12580 (Jan. 23, 1987). 52 F.R. 2923 (Jan. 23, 1987).

35. As set forth above, EPA determined that the Site may present an imminent and substantial endangerment to the public health and environment because of an actual or threatened release of hazardous substances.

36. On December 19, 1989, the EPA issued a Unilateral Administrative Order, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), ordering the Defendants to design and implement the remedy set forth in ROD-2.

37. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

38. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been released from the facility into the environment, including surface and groundwaters.

39. At the Site, there is a continuing "threat" of "release" of hazardous substances into the environment within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a).

40. As a result of the release or threatened release of hazardous substances into the environment, EPA determined that there may be an imminent and substantial endangerment to the

public health or welfare or the environment within the meaning of Section 106 of CERCLA, 42 U.S.C. § 9606.

41. The Defendants are jointly and severally liable for remedying the releases and threatened releases of hazardous substances at the Site.

SECOND CLAIM FOR RELIEF
(CERCLA Section 107 Response Costs)

42. Paragraphs 1 through 41 are realleged and incorporated herein by reference.

43. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section . . .

- (1) the owner and operator or . . . of a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances . . .

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . . .

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). . . .

44. The United States has incurred and will continue to incur response costs not inconsistent with the NCP to respond to the release or threatened release of hazardous substances at the Site, including the costs for removal and remedial actions, within the meaning of Section 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601(23), (24), and (25).

45. Each Defendant is a “person” as that term is defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and each Defendant is within one of the classes described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or is otherwise liable for the United States’ response costs.

46. Each Defendant is jointly and severally liable to the United States for all response costs incurred, and to be incurred, by the United States in connection with the Site.

47. The Defendants also are jointly and severally liable for interest on the response costs incurred by the United States, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

48. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment that the Defendants are jointly and severally liable for such future response costs that the United States may incur in connection with the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that this Court:

1. Enter judgment in favor of the United States and against the Defendants, jointly and severally, for all response costs incurred by the United States in connection with the Site, including but not limited to, enforcement, direct and indirect costs and interest thereon, incurred by the United States in connection with the Site;
2. Order Defendants to conduct the remedial action at the Site identified in ROD-2;
3. Enter a declaratory judgment stating that each Defendant will be liable for all future response costs incurred by the United States in connection with the Site; and

4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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